

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In Re the Petition of

Challenger Trading S.A.

For Discovery in Aid of a Foreign Proceeding
Pursuant to 28 U.S.C. § 1782

ECF CASE

Civil Action No. _____

IN ADMIRALTY

**PETITION FOR AN ORDER ALLOWING
DISCOVERY PURSUANT TO 28 U.S.C. §
1782**

Petitioner Challenger Trading S.A. (“Challenger” or “Petitioner”) hereby submits this Petition for an Order, pursuant to 28 U.S.C. § 1782 and Rules 26, 30, and 45 of the Federal Rules of Civil Procedure, to obtain discovery from UniCredit Bank AG, for use in contemplated London maritime arbitration proceedings, based on a breach of a time charter agreement. In support of this Petition, Petitioner incorporates the accompanying Memorandum of Law and Declaration of J. Stephen Simms (the “Simms Declaration”), and states further as follows.

1. Section 1782 provides for discovery in the United States to assist foreign tribunals and parties to proceedings before foreign tribunals, and states, in relevant part:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made ... upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court.

2. The requirements of § 1782 are satisfied in this case. As explained further in the accompanying Memorandum of Law: (1) the discovery subjects “reside” or are “found” in this District; (2) the discovery sought is “for use in” a proceeding before a foreign tribunal; and (3) the Applicant is an “interested person” in that proceeding. 28 U.S.C. § 1782. The discretionary

factors considered by a Court when evaluating a §1782 request also weigh in favor of granting this application. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65 (2004).

3. The Simms Declaration confirms that the requested relief is for the purpose of obtaining discovery in aid of a related contemplated foreign proceeding.

4. The related contemplated foreign proceeding concerns a breach of a time charter by Valeska Shipping Lines Limited (t/a Valeska Nigeria) (“Valeska”). Petitioner and Valeska are parties to a time charter agreement (the “Time Charter”), entered into on or about February 22, 2013, pursuant to which Challenger agreed to charter the M/V ADMIRAL L (the “Vessel”) to Valeska.

5. Valeska intended to use the Vessel for a single voyage between two Nigerian ports. Valeska failed to register the Vessel with, and failed to obtain the required clearances from, the Nigerian Maritime Administration and Safety Agency (“NIMASA”) in order to effect the voyage. As a result of Valeska’s failures, NIMASA detained the Vessel. In order to secure release of the Vessel, Challenger paid the necessary registration fees to NIMASA. Challenger also incurred significant costs and expenses (including legal and agency fees) to obtain the necessary clearance from NIMASA. Challenger is commencing London arbitration proceedings against Valeska for its breach of the Time Charter by failing to take the necessary steps with NIMASA to effect the voyage for which Valeska had chartered the Vessel.

6. The accompanying Simms Declaration and the supporting Memorandum of Law confirms UniCredit Bank AG was the institution involved in the underlying transactions related to the Time Charter. Petitioner seeks narrowly tailored discovery as to UniCredit Bank AG, reasonably calculated to lead to the discovery of admissible evidence concerning the actions of

Valeska with respect to the Time Charter. The discovery requested in this Petition is necessary information as to the operations of Valeska.

7. Accordingly, for the foregoing reasons, and for the reasons set forth in the accompanying Simms Declaration, and the Memorandum of Law in support of this application, Petitioner respectfully requests that this Court enter an order, pursuant to § 1782, in a form similar to the proposed order filed herewith, granting leave to conduct the requested discovery in a form similar to the proposed subpoena attached an exhibit to the Simms Declaration.

WHEREFORE, for the reasons set forth above and in the accompanying Memorandum of Law and Simms Declaration, Petitioner respectfully requests that this Court grant this Petition for an Order to Obtain Discovery for Use in a Foreign Proceeding.

Dated: June 6, 2016.

/s/ J. Stephen Simms
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